

# EXHIBIT A

## COVER MEMORANDUM

TO: Lt. Gov. John Garamendi

FROM: Frank O'Brien, for TraPac Appellants

CC: Paul Thayer, Executive Officer California State Lands Commission  
Office of Los Angeles Mayor Antonio Villaraigosa  
Los Angeles City Councilwoman Janice Hahn  
Los Angeles City Attorney, Tom Russell  
Los Angeles Board of Harbor Commissioners, David Freeman, President  
Geraldine Knatz, Executive Director Port of Los Angeles  
TraPac Appellants

DATE: October 6, 2008

SUBJ: Near-Port Impacts Nexus Memorandum

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Thank you for meeting in San Pedro, Calif. Tuesday, September 30, 2008 to discuss near-port impacts and the TraPac Memorandum of Understanding.

In response to your request TraPac appellants have prepared the attached memo on near-port impacts and the TraPac MOU.

The memo provides background and a review of current issues surrounding near-port impacts and efforts to mitigate these impacts. Please note that the document does not express a formal or binding legal position of the TraPac appellants as a group or of the individual organizations; it is intended to help guide discussion of near-port impacts and a nexus with port operations.

To summarize the material in the attached memo:

- Functional port operations at the Port of Los Angeles extend beyond tidelands boundaries.
- These port-serving facilities create significant public health and other environmental impacts on the near-port communities of Wilmington and San Pedro.
- The TraPac MOU provides a way forward to quantify and address these impacts.

The memo concludes with our requested for action by the State Lands Commission.

We look forward to a substantive discussion at the State Lands Commission meeting October 16, 2008 in San Diego and future work with the Commission, SLC staff, the business community and other port stakeholders in resolution of this important issue.

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## Near-Port Impacts Nexus Memorandum - October 6, 2008

### Introduction

This memorandum considers the question of whether a nexus exists between Port of Los Angeles industrial operations and public health and other environmental impacts in Wilmington and San Pedro, California. Wilmington and San Pedro are City of Los Angeles neighborhoods located adjacent to the Port immediately outside the tidelands line. [Exhibit A Tidelands / Community Map].

The memorandum presents narrative and photographs [Exhibit B photos] in support of the proposition that Port of Los Angeles industrial operations have a direct nexus with certain public health and other environmental impacts on Wilmington and San Pedro. These impacts have created an environmental *injustice* in these communities.

The memorandum is also intended to help guide discussion about work planned under the TraPac Memorandum of Understanding [Exhibit C MOU]. The MOU was concluded April 2008 between the City of Los Angeles and non-governmental organizations, community groups and individuals, resolving an appeal to the Los Angeles City Council after Harbor Commission approval of the TraPac terminal expansion EIR. The MOU allows the terminal expansion project to move forward while establishing a mechanism to address environmental issues raised in the appeal.

The MOU establishes a mechanism to quantify and reduce highly localized impacts at the Port of Los Angeles. These local impacts arise in part from California's state-wide policy on ports. Under this policy, port industrial activity in California is concentrated at a small number of designated harbors. Among designated harbors, impacts are especially severe at Los Angeles and Long Beach, where annual cargo volume is approximately 7 times greater than at Oakland, the next largest of the other California commercial ports.

The MOU provides for land use and public health studies to evaluate these highly localized Port of Los Angeles impacts in Wilmington and San Pedro.

The MOU also designates an "interim entity" to study and make recommendations concerning a future new non-profit organization. The new non-profit would carry out mitigation programs for agreed port impacts in Wilmington and San Pedro. It would be funded through the port's general fund; it could also seek funds from other sources.

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The goal of the nonprofit is to provide an effective mechanism – consistent with the tidelands trust – to mitigate agreed near-port public health and other environmental impacts from the Port of Los Angeles on Wilmington and San Pedro. This mechanism would reflect the reality that functional port operations at Los Angeles Harbor extend beyond the narrow boundaries of the tidelands zone into adjacent communities, as discussed in greater detail below.

The interim entity study period will be approximately one year. The study will include the evaluation of alternative nonprofit structures to carry out any agreed mitigation measures. Importantly, this evaluation process has not yet started and no predeterminations exist as to its conclusions. TraPac appellants welcome the participation and perspective of State Lands Commissioners (“SLC”), SLC staff, the business community and other Port stakeholders in this work.

Finally, this memorandum is intended to aid the State Lands Commission in implementing its environmental justice policy, which states:

The Commission pledges to continue and enhance its processes, decisions, and programs with environmental justice as an essential consideration. Environmental justice is defined by State law as “the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.” This definition is consistent with the Public Trust Doctrine principle that the management of trust lands is for the benefit of all of the people.

Mitigation of impacts on the near-port communities of Wilmington and San Pedro caused by port operations is a critical component of the execution of the Commission’s environmental justice policy.

### **Near Port Impacts Have a Nexus with Port Operations**

Specific, significant adverse public health and other environmental impacts occur in Wilmington and San Pedro outside of the Port’s boundaries. These “near port impacts” are created by Port related operations, and thus those impacts, and the programs that remedy them, have a “nexus” to Port operations.

For example, activities at container storage yards, truck service facilities, rail lines and rail yards undeniably support and facilitate essential commerce, maritime and other traditional Port operations. These port-serving facilities operate near homes, schools, community clinics, day care locations,

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recreational centers and playgrounds (sensitive sites). They generate impacts on:

- land use
- security
- light and glare
- truck traffic / public safety
- air quality
- reduction of public coastal access
- blight / aesthetics
- noise
- loss of natural habitat

The failure to mitigate near-port community impacts in Wilmington and San Pedro raises serious public health, socioeconomic and social equity / environmental justice concerns. Exhibit D provides a preliminary list of relevant income and public health data from the near-port neighborhoods of Wilmington and San Pedro.

### **Near-Port Impacts and Mitigation at the Port of Los Angeles – China Shipping History**

In response to litigation, public advocacy and heightened regulatory attention, the Port of Los Angeles has made progress addressing its local and regional adverse impacts especially on air quality. This progress began with the 2001 China Shipping litigation and settlement.

The China Shipping litigation challenged Port approval of a major terminal expansion project at a former shipyard site immediately adjacent to homes and schools in San Pedro. Up to and including the China Shipping project, the Port's environmental documents did not acknowledge most of the significant environmental impacts from Port operations. As a result, during twenty years of exponential cargo volume growth and facilities expansion, a significant backlog of unmitigated public health and other impacts accumulated.

Since 2001, the Port has struggled to address these serious accumulated impacts with meaningful mitigation programs. From 2001 to 2007 the Port did not approve any new terminal or transportation infrastructure projects. During this 7 year period, Port cargo volume increased at an average annual rate of over 5% per year and transitioned to round-the-clock operations. Port-serving facilities expanded in Wilmington and San Pedro to accommodate the steady cargo volume increases. This growth – which occurred without environmental analysis or a meaningful port master plan<sup>1</sup> which

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<sup>1</sup> The Port of Los Angeles Master Plan was created in 1979 and has had ad hoc amendments since then, but there has not been a significant global review of the adequacy of this plan to deal with modern port-related issues.

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might have identified appropriate mitigation measures - added to the already substantial level of unmitigated impacts on near-port communities.

From Fiscal Year 2001 to Fiscal Year 2007, the Port generated \$2,400.0 million dollars in total top line revenue; as of the end of FY08 (June 30, 2008), the port reported \$300.0 million dollars in unallocated funds on its balance sheet.

### **Independent Analysis of Impacts at the Port of Los Angeles & Agency Responses Since 2001**

The China Shipping litigation and settlement marked the start of a new era at the Port. The Port, and the California goods movement system as a whole, came under close scrutiny after 2001, as economists and public health professionals increasingly applied independent analytical methods to port operations and the goods movement system. The September 11 attack made port security a sobering concern. Statewide and national organizations – from many sectors - brought new resources and perspectives to port issues.

The Public Policy Institute of California released a study that considered all port related public health and transportation infrastructure expenses and introduced the question of “externalized costs” into port policy discussions. *“California’s Global Gateways: Trends and Issues”* (2004).

A large body of highly credible scientific research emerged showing the connection between diesel engine particulate matter and impairment of public health, including the high levels of childhood asthma in harbor communities. The California Air Resources Board, for example, relied on this research to estimate goods movement health impacts and to complete an emission reduction plan in 2006. The ARB plan noted the importance of evaluating land-use patterns in urban public health analysis and recommended separation between air pollution sources, like ports and rail yards, and sensitive land uses, like homes and schools. California Air Resources Board, *“Air Quality and Land Use Handbook: A Community Health Perspective”* (April 2005).

Independent documentation of the high local costs of global trade moving through Los Angeles Harbor, together with acknowledgement of the contrast between socioeconomic conditions in near port and the great wealth and economic value generated by this trade, created wider awareness of the environmental and social equity dimension of the California goods movement system. Agencies at all

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levels prepared environmental justice policies to help guide decision-making; the State Lands Commission adopted its Environmental Justice Policy in October 2002.

The mitigation measures developed by the Port of Los Angeles and put into place since 2001 in response to these developments have been limited primarily to on-port initiatives (i.e., programs that aim to reduce environmental impacts generated by sources on port land and water). An important exception is the 2008 Clean Trucks Program, a useful precedent for evaluating near-port mitigation measures which may emerge from the MOU study process.

### **The TraPac Project Approval and Memorandum of Understanding**

The December 2007 TraPac terminal expansion Environmental Impact Report (“EIR”) was the first environmental document approved by the Port of Los Angeles since the 2001 China Shipping project. Like China Shipping, TraPac is a huge terminal expansion project immediately adjacent to homes, schools and businesses. The TraPac terminal will have an especially acute impact in Wilmington because of the project’s scale and close proximity to non-industrial uses. At full build-out the TraPac terminal alone will have approximately the same cargo capacity as the entire port of Oakland. The TraPac project, as approved in December of 2007, included many positive measures, including a greenbelt buffer and clean air measures, but did not meaningfully address near-port impacts.

The April 2008 TraPac MOU agreement was structured to allow the project to move forward while putting a process in place to evaluate near-port impacts and then to establish a mechanism to fund and carry out agreed near-port mitigation programs. The MOU is designed to resolve problems encountered during implementation of the China Shipping near-port mitigation program.

### **The China Shipping Experience**

The 2001 China Shipping litigation settlement (revised 2004) included a \$50.0 million mitigation fund for port impacts in Wilmington and San Pedro. This fund has not been effective in addressing near-port, non air quality impacts.

Under the settlement, local applicants propose near-port mitigation projects following procedures set forth in the agreement. Each applicant is required to show how their proposal has a nexus with impacts from port operations. The settlement did not include provisions for expert assistance to

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applicants for a nexus analysis. Nor does the Port independently assist applicants in making the nexus analysis.

Local applicants have made their best efforts to provide a nexus analysis for their proposals. The analysis consisted largely of empirical evidence centering on individual proposals. The nexus case was not tied to specific past port expansion projects or a comprehensive, independent expert assessment of the cumulative near-port impacts.

SLC staff has objected to these off-port mitigation projects, largely on its assessment that applicants have not established a nexus between Port operations and proposed projects. Staff also stated that some of the projects appeared “municipal” in nature rather than having a statewide or greater-than-local maritime-related benefit.

We believe the SLC staff has set an inappropriately high bar for evidence needed to make a nexus showing for spending under the China Shipping program, especially in view of the serious public health and other impacts highly concentrated in areas of the state established as gateway ports for the state and national goods movement industry.

Certain harbors in California have been designated as “commercial port districts.” These harbors, in the language of Public Resources Code § 30700-30701 “shall be encouraged to modernize and construct necessary facilities within their boundaries in order to minimize or eliminate the necessity for future dredging or filling to create new ports in new areas of the state.” Designating a limited number of state ports for industrial activity effectively eliminates port-related impacts for communities elsewhere along the California coast. Accordingly, heavy port industrial impacts are concentrated on near-port neighborhoods like Wilmington and San Pedro.

The tidelands zone is a narrow band of coastal land. To operate a modern mega-container port complex like the Port of Los Angeles requires land beyond the historic tidelands boundary by fill of water and wetlands and by near-port land uses. This is immediately apparent through empirical observation of near-port activities at the Port. These port-serving activities throughout San Pedro and Wilmington were documented in the China Shipping mitigation proposals. A sample of these activities is included in the narrative and photographs of this memorandum.

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Near port mitigation was effectively precluded through the China Shipping program as SLC staff was guided by an unduly narrow interpretation of state tidelands trust law. The most severe impacts from port-related operations are highly localized, so corresponding mitigation measures must also be localized to protect people living near port from the harmful effects of port operations.

While recognizing SLC staff's commitment to the integrity of the trust doctrine, we believe SLC staff's objections ignore the reality of modern port operations in Los Angeles. The result is that serious public health and other environmental impacts in near port communities arising from port operations remain unaddressed - and continue to accumulate - creating undeniable environmental justice impacts in Wilmington and San Pedro.

As described below, the TraPac MOU process, starting with the two near-port studies, is structured to address the issues which prevented effective use of the China Shipping mitigation fund for near-port mitigation.

### **TraPac Memorandum of Understanding: A Mechanism For Addressing Near-Port Impacts**

The MOU is intended to help fulfill the Port's stated policy of "green growth". It does this by providing a way for cargo terminal and goods movement infrastructure expansion projects in Los Angeles to move forward while addressing the past and future cumulative impacts on near-port communities.

Some existing near-port impacts – container storage yards in residential neighborhoods or truck facilities near schools, for example - cannot always be directly attributed to a single existing port tenant. New on-port projects may contribute to existing near-port impacts to a degree that is difficult to calculate precisely. Applying a disproportionate share of the past mitigation obligation to new projects could in some circumstances create inequitable financial burden for applicants, charging them for impacts arising from existing tenants.

The MOU addresses this issue by creating a fund supported by Port general revenues – monies generated by all tenants - not payments from any new project alone.

The MOU also provides for two independent land use and public health studies that should provide the evidence-base needed to support near-port mitigation. In other words, these studies will provide further documentation of the nexus between near-port impacts and the programs that mitigate those



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impacts, and port operations. The SLC staff has indicated a great interest in the findings of these studies to help them in administering their duties under California law.

Implementation of the MOU occurs in two basic steps:

First, establishment of an "interim entity". The interim entity will work on the near-port studies and evaluate options and make recommendations with respect to the future non-profit organization.

During this initial phase, work may also begin on several small-scale mitigation programs in Wilmington involving air-filters and window replacements starting with school buildings.

Second, establishment of the non-profit and start of work on the mitigation programs.

This approach provides opportunity for a full examination of public trust doctrine and other issues associated with a near-port program before a new non-profit would be established. These first-step issues include:

- scope of the land-use and public health studies
- new non-profit governance and relationship to the Port
- auditing functions and such issues as status of funds not expended for agreed mitigation programs
- questions of delegation by the Port to the new non-profit

We anticipate that the first phase of MOU implementation will take 12 months from the start of executing a final agreement with the interim entity.

The interim entity is envisioned as a small group of independent experts working with the appellant group, the Port, State Lands Commission and staff and other port stakeholders. The interim entity is charged with doing research, offering alternatives and making recommendations leading to successful agreement on a trust-compliant near-port mitigation program.

## **Near-Port Spending & Outside Contractor Precedents**

The port regularly spends inland beyond its tidelands boundaries. For example, for many years the port has carried out land purchases outside the tidelands. The port recently contributed approximately \$5.0

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million dollars to the Metropolitan Transportation Authority for planning the I-710 freeway expansion. These off-port growth expenditures were not challenged by SLC staff.

If the port may legitimately spend off-port for facility expansion and growth-supporting infrastructure, it may also legitimately spend for mitigating its public health and environmental impacts on near-port communities.

The Port frequently contracts with outside parties who implement programs in fulfillment of policy directives from the Harbor Commission. Many port-funded tasks are carried out by consulting firms, subcontractors, independent contractors, other government agencies and independent organizations both for-profit and non-profit.

For example, the Port made multi-million dollar allocations to the Gateway Cities Council of Governments as part of the Ports Clean Truck Program. The Gateway Cities COG is an independent entity that received Port funds and manages a port program under an agreement with the port.

The proposed new non-profit organization is a close analogy to the Gateway Cities COG, administering near-port mitigation programs under an agreement with the port. However, given the need to work collaboratively on issues arising with a proposed new non-profit, the MOU signatories decided it would be helpful to hire an interim entity to provide analysis and recommendations on how to set up such an entity in compliance with state laws.

### **Next Steps / Action Requested of State Lands Commission**

Appellants believe the engagement of State Lands Commission staff and Commissioners will be useful in resolving near port mitigation issues outlined above. To that end, Appellants propose the following actions:

1. The State Lands Commission find that Port operations are creating public health and other environmental impacts in the communities of Wilmington and San Pedro. Further, these near-port impacts are creating an environmental justice problem in these communities.
2. SLC staff provide periodic updates to the Commission at a public meeting on its efforts to ensure that near port impacts are mitigated, including but not limited to updates on its involvement in

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the implementation of the TraPac MOU, with the next update on the Commission agenda at its Spring 2009 meeting.

If there are barriers to the implementation of the MOU—whether they are legal, political, or otherwise—SLC staff should describe those barriers and propose solutions to ensuring swift implementation of the MOU.

Further, when such updates are provided, a member of the TraPac Appellant Group and other interested parties shall be given an opportunity to provide their perspective on the implementation of the MOU.

[Attachments—Exhibits A through D]

















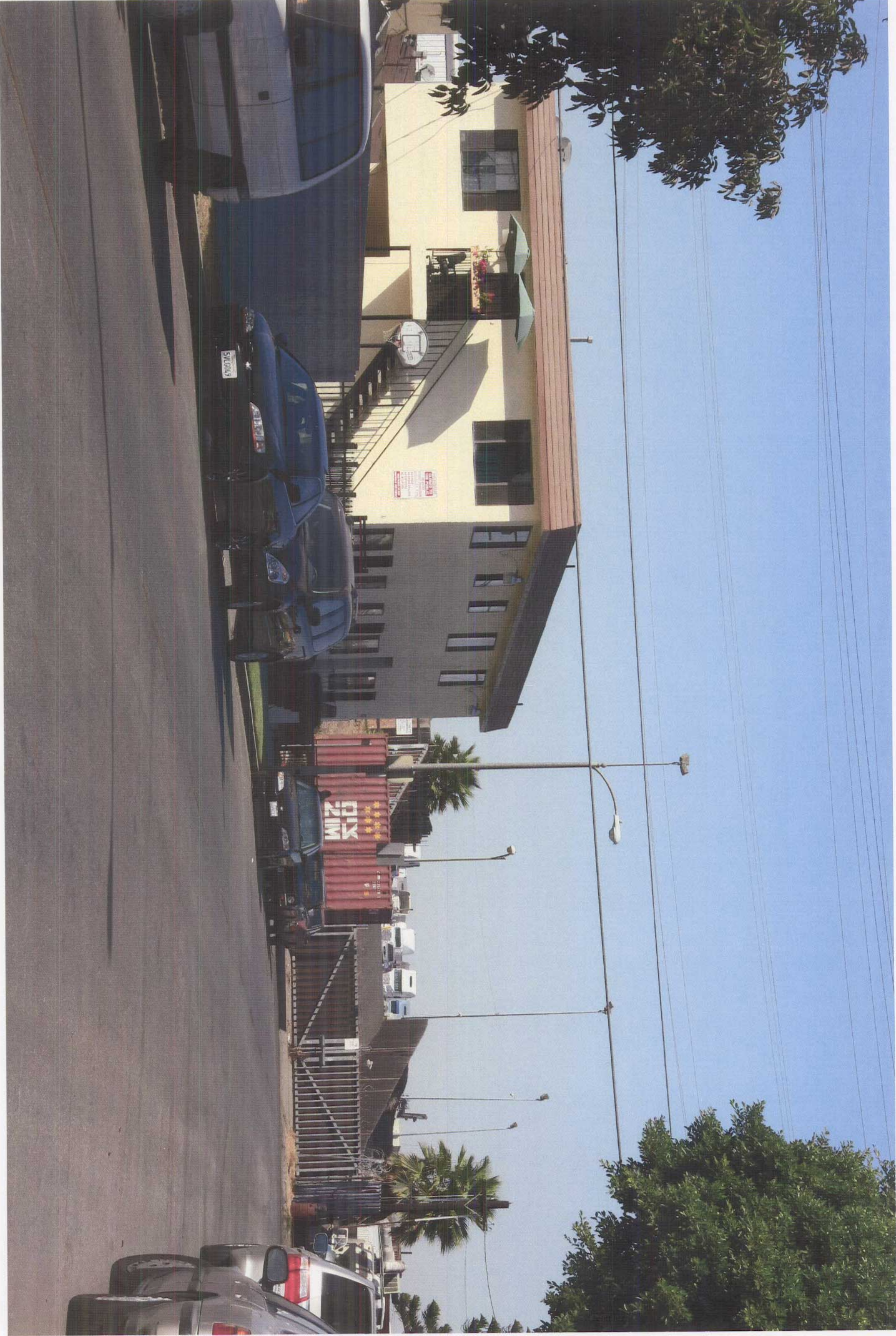
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## MEMORANDUM OF UNDERSTANDING

### I. DEFINITIONS

1. The term “CEQA” shall mean the California Environmental Quality Act (Public Resources Code § 21000 *et seq.*) and the State CEQA Guidelines and applicable case law.
2. The term “City” shall mean the City of Los Angeles.
3. The term “Clean Air Action Plan” shall mean the San Pedro Bay Ports Clean Air Action Plan adopted by the Los Angeles Board of Harbor Commissioners and Long Beach Board of Harbor Commissioners on November 20, 2006.
4. The term “Port” shall mean the Port of Los Angeles Board of Harbor Commissioners.
5. The term “NEPA” shall mean the National Environmental Policy Act (42 U.S.C. § 4321 *et seq.*).
6. The term “Nonprofit” shall mean the entity created by this agreement in section V to execute the Port Community Mitigation Trust Fund.
7. The term “Parties” shall mean the City, Port and Appellants.
8. The terms “Port Community Mitigation Fund” shall mean the fund created under this Agreement between the Parties, and shall be used by the Nonprofit solely to fund mitigation projects.
9. The terms “RFP” shall mean Request For Proposals.
10. The term “TraPac EIR” shall mean the environmental impact report prepared by the Port under CEQA for the container terminal project at Berths 136-147 of the Port.
11. The term “TraPac Project” shall mean the project described in the TraPac EIR.
12. The term “Appellants” shall mean the Natural Resources Defense Council, American Lung Association of California, Change to Win, Coalition for a Safe Environment, Coalition for Clean Air, Communities for a Better Environment, Communities for Clean Ports, Earth Day LA, Environmental Priorities Network, Harbor Watts Economic Development Corporation, International Brotherhood of Teamster, Los Angeles Alliance for a New Economy, Physicians for Social Responsibility—LA, San Pedro and Peninsula Homeowner’s Coalition, Sierra Club Harbor Vision Task Force, Kathleen Woodfield, and Chuck Hart, who appealed the Port’s approval of the TraPac EIR to the City Council.

## **II. BACKGROUND**

WHEREAS, the Parties desire to resolve the disputes between them arising from the Port's approval of environmental impact reports (EIRs);

WHEREAS, the surrounding communities of Wilmington and San Pedro, however, receive a disproportionate share of negative environmental impact due to port operations;

WHEREAS, the Parties agree to support collaborative efforts to grow and green the port in a manner that provides a concrete way to reduce cumulative environmental impacts on the community while creating jobs and economic prosperity to the surrounding region;

WHEREAS, the Parties agree that there are off-port impacts in the communities of San Pedro and Wilmington; and

WHEREAS, the Parties agree that this agreement does not address all the impacts stemming from port operations.

NOW THEREFORE, the Parties agree as follows:

## **III. DECLARATION OF GOALS AND PURPOSES**

The Parties enter this agreement to address the Port and the City's desire to provide for operation of the TraPac Project without litigation or appeals to the Los Angeles City Council from Appellants. The Parties want to address the outstanding impacts from port operations and growth. The Parties agree that this agreement provides a mechanism for moving forward in cooperation to determine how best to address impacts from current and future port operations. All Parties agree that the mitigation contained within this agreement has a nexus with port operations. The Parties' decision to enter this agreement does not constitute any representation regarding the adequacy of the TraPac EIR.

## **IV. FUTURE COOPERATION BETWEEN THE PORT, CITY, AND APPELLANTS**

The Parties or their designated representative shall cooperate to implement this agreement. In addition, the Parties or their designated representative shall agree to cooperatively address and respond to future port-related environmental issues at the Port and in San Pedro and Wilmington. Upon the Port's request, Appellants engaged in the EIR process for specific projects, agree to individually or as a collective group meet and confer in good faith with the Port on such future EIRs on Exhibit B and will make efforts to avoid litigation or appeals to the City Council. The Port will take reasonable efforts to disclose all pertinent information to the Appellants to the extent feasible prior to release of the DEIR to help inform discussion and feedback. To the extent the ports make the information available, Appellants may give Port staff written or oral comments.

Upon the Ports' request, Appellants individually or as a collective group will meet and confer in good faith with the Port after submitting a formal comment letter on a DEIR. After the Port has certified an EIR, Appellants will contact the Port or Port staff prior to filing an appeal or a lawsuit challenging the project within the time constraints imposed by law.

## **V. PORT COMMUNITY MITIGATION TRUST FUND**

The Port shall establish a Port Community Mitigation Trust Fund to be operated by a Nonprofit established for the purpose of overseeing grants from the Port Community Mitigation Trust Fund. A Nonprofit will be set up to provide off port mitigation projects for the communities of Wilmington and San Pedro related to impacts from port operations. The Nonprofit may also fund community adjacent wetlands, supporting habitat zones and appropriate public access and viewing sites to same projects that may occur on-port lands. The Nonprofit may get funding from other sources to execute its mission, and it may also make recommendations to the Board of Harbor Commissioners on mitigation projects.

### **A. PURPOSE OF THE NONPROFIT**

A Nonprofit will be established to address off-port impacts created by existing and future Port operations in the communities of Wilmington and San Pedro, including but not limited to off-Port impacts from the TraPac Project in Wilmington and San Pedro.

Specifically, the Nonprofit's mission shall be to allocate money for projects that will protect, improve and assess public health by offsetting past, present, and future off-port impacts from Port operations, including the CEQA categories of noise, land use, blight/aesthetics, recreation, natural resources, light/glare, safety, air quality, community resources, cultural resources, geology and soils, population and housing, public services, water quality, and future categories of impacts identified under CEQA. Such projects shall be geared towards addressing the cumulative off-port impacts created by Port operations. The Nonprofit shall not allocate money for goods movement infrastructure projects. The Port and City agree that monies provided by the Port to the Nonprofit for such projects shall be allocated in a manner consistent with Section VB of this Agreement.

Funds allocated to the Nonprofit shall not be used to fund CEQA/NEPA mitigation for future projects and/or mitigation already designated within the TraPac EIR/EIS or other future CEQA/NEPA documents. It is assumed that projects subject to CEQA/NEPA will include all mitigation that is legally required and that the Port and/or project applicant will be responsible for the costs associated with that mitigation. In other words, the establishment of the Port Community Mitigation Trust Fund does not eliminate or reduce the Port's obligations to mitigate the adverse impacts of its projects consistent with CEQA, NEPA, and CAAP, whether inside or outside of the Port. In the first year, the Nonprofit shall ensure that the projects described in "Exhibit A" are prioritized for

funding before other projects are approved for funding. Specifically within “Exhibit A,” categories A, B, and C shall have greatest priority for initial funding. In addition, the Nonprofit shall develop project criteria to ensure that all other projects approved and funded through the Port Community Mitigation Trust Fund are consistent with this section of this Agreement. The funding provided by the Port to the Port Community Mitigation Trust Fund shall be determined according to the calculus laid out in section VB.

## B. FUNDING

- i. \$500,000 up front for organizational costs.
- ii. \$11,240,000 for the TraPac project contribution for the Exhibit A Projects— This \$11.24 million comes from the following two contributions:
  - a. Approximately \$6 million for air filtration systems in schools;
  - b. \$5.24 million for other projects identified in Exhibit A from the projected increase in TEUs from the TraPac project ( $\$3.50 \times 1,497,142$  TEUs).
- iii. \$300,000 for off port impact study articulated in section VI A.

Total Year 1 contribution: \$12.04 million

From year 2 forward, the sum of:

- iv. \$2.00 per TEU for the increase in TEUs over the prior calendar year from facilities existing in 2007, and continued for the incremental increase in the four remaining years of this agreement.
- v. If Port expansion projects from Exhibit B proceed, the Port will make a one-time additional contribution at a rate of \$3.50 per TEU (or \$1.50 for px and 0.15 per ton) per project for growth associated from such expansion projects. The funds will be transferred into the Port Community Mitigation Trust Fund on approval by the Port of each individual project. This provision is not to be interpreted that all of the projects from “Exhibit B” must proceed before transferring individual project contributions into the Port Community Mitigation Trust Fund.

“Exhibit C” provides a sample of how potential contributions to the Port Community Mitigation Trust Fund could work in 2008.

## C. REQUIREMENTS FOR NONPROFIT

The requirements for compliance for the Nonprofit entity with respect to delegation of authority and compliance with tidelands trust requirements will be determined in connection with the establishment of the Nonprofit. The Nonprofit’s bylaws and the Port’s agreement with the Nonprofit shall provide for adequate oversight of the

Nonprofit. Prior to the release of any funds, the City Attorney's office shall prepare the necessary documents to ensure compliance with all laws, including the City of Los Angeles Charter and Administrative Code and the Tidelands trust. The Port Community Mitigation Trust Fund will at all times be subject to the applicable local and state laws pertaining to certain legal matters.

#### D. PHASE IN PERIOD

Within 60 days of entering into this agreement, the Parties will agree to an interim entity that will be responsible for assisting in the creation of the Port Community Mitigation Trust Fund and the Nonprofit to administer the fund. The interim entity will facilitate and coordinate the development of bylaws, organizational structure, and a multi-year strategic plan by working and soliciting input from the Parties. The interim entity may have the responsibility for funding a small subset of Exhibit A projects with Year 1 funds and the studies articulated in section VI upon the direction of the Appellants and the Representative for Council District 15. The allocation within section VB<sub>i</sub> could go towards consultants and/or experts to assist in development of bylaws, organizational structure, and a multi-year strategic plan.

#### VI. OFF-PORT IMPACT STUDIES

A. The Port will fund an initial study of off-Port impacts, with a maximum price of \$300,000. If the cost of the study exceeds this amount, then money shall be augmented from section VB funds. The study will consist of an analysis of off-port impacts on health and land use in Wilmington and San Pedro. The land-use analysis will take into consideration the applicability of the California Air Resources Board's April 2005 study "Air Quality and Land Use Handbook: A Community Health Perspective" and the health impacts analysis will take into consideration the applicability of the biannual survey by the UCLA Center for Health Policy Research called the California Health Interview Survey, which already does a more concentrated interview process in LA County. A third party entity selected through an RFP process shall carry out the study. It is envisioned that this initial study will take six months. The Port will not be involved in the execution of this study, but rather, this initial study shall be commissioned by the interim entity identified within section VC. A report on the scope of the study as articulated within the RFP shall be made to the Trade, Commerce and Tourism Committee of the Los Angeles City Council before being issued. In addition, periodic updates on the study progress shall be made to the Trade, Commerce and Tourism Committee of the Los Angeles City Council.

B. Once the Nonprofit has been established, it will fund from section VB<sub>ii</sub> funds a second, more expansive study of off-Port impacts examining aesthetics, light and glare, traffic, public safety and effects of vibration, recreation, and cultural resources related to port impacts on harbor area communities, including Ranchos Palos Verdes, with a maximum price of \$300,000. The Port will not be involved in the selection of the third party entity or execution of this study. If the cost of the study exceeds this amount, then additional funds from section VB<sub>ii</sub> shall be used to complete the study. A third

party entity selected through an RFP process shall carry out the study. The results of the study will be presented to the Trade, Commerce and Tourism Committee of the Los Angeles City Council.

**VII. BUFFER ZONE**

The Board of Harbor Commissioners will take necessary actions to place a deed restriction on the Wilmington buffer to ensure the property remains as public open space in perpetuity.

**VIII. RELEASE OF CLAIMS**

The Appellants hereby release all claims relating to the Port's approval of the TraPac EIR/EIS, including CEQA challenges. Further, this release does not release any of the rights and obligations under this agreement, and shall not extend to any action to enforce or interpret the provisions of this agreement.

**IX. RENEWAL OF AGREEMENT**

After a period of 5 years, the agreement may be renewed for a successive 5 year period by mutual agreement of the Port and a majority of the Appellants.

**SIGNATURES OF PARTIES:**

DATED: \_\_\_\_\_  
The Los Angeles Board of Harbor Commissioners

By: \_\_\_\_\_  
S. DAVID FREEMAN  
President

[Signatures Continued On Next Page]



DATED: \_\_\_\_\_  
The City of Los Angeles Harbor Department  
And the City of Los Angeles by its Board of  
Harbor Commissioners

By: \_\_\_\_\_  
Geraldine Knatz, PhD Executive Director

DATED: 4/2/2008  
Appellants

By: /s/ David Pettit  
David Pettit  
Natural Resources Defense Council

By: /s/ Colleen Callahan  
Colleen Callahan  
Manager of Air Quality Policy and Advocacy  
American Lung Association of California

By: /s/ Greg Tarpinian  
Greg Tarpinian  
Executive Director  
Change to Win

By: /s/ Jesse Marquez  
Jesse Marquez  
Executive Director  
Coalition for a Safe Environment

By: /s/ Martin Schlageter  
Campaign and Advocacy Director  
Coalition for Clean Air

By: /s/ Shana Lazerow  
Shana Lazerow  
Attorney  
Communities for a Better Environment

[Signatures Continued On Next Page]

By: /s/ Rupal Patel  
Director  
Communities for Clean Ports

By: /s/ Jim Stewart  
Earth Day LA

By: /s/ Lillian Light  
Lillian Light  
President  
Environmental Priorities Network

By: /s/ Frank O'Brien  
Executive Director  
Harbor Watts Economic Development Corporation

By: /s/ Chuck Mack  
International Vice President and Port Division Director  
International Brotherhood of Teamsters

By: /s/ Patricia Castellanos  
Co-Director, Ports Campaign  
Los Angeles Alliance for a New Economy

By: /s/ Katherine Attar  
Health and Environment Program Coordinator  
Physicians for Social Responsibility

By: /s/ Andy Mardesich  
Andy Mardesich  
President  
San Pedro and Peninsula Homeowners Coalition

By: /s/ Tom Politeo  
Tom Politeo  
Co-Chair  
Sierra Club Harbor Vision Task Force

By: /s/ Kathleen Woodfield  
Kathleen Woodfield

By: /s/ Chuck Hart  
Chuck Hart

**APPROVED AS TO FORM:**

Dated: \_\_\_\_\_  
ROCKARD J. DELGADILLO, City Attorney

By: \_\_\_\_\_  
Thomas A. Russell  
General Counsel  
Port of Los Angeles

## **EXHIBITS**

### **EXHIBIT A**

Projects identified in A, B, and C will occur in Wilmington only.

- A. Installation of sound dampening double paned windows in schools and residences in the zone of greatest impact from TraPac
- B. Installation and maintenance of air filtration systems/HVAC air purifiers in schools impacted from TraPac operations
- C. Provide funds to local clinics, other health service providers, and other organizations aimed at addressing health impacts from air pollution stemming from port operations;
- D. Qualified job training/hiring program associated with the Wilmington off-port mitigation measures identified in A, B, and C above, consistent with the Port and City's workforce development efforts.
- E. An analysis of the impacts of port operations on wetlands and recreational access in Wilmington and San Pedro. Specifically, the study will serve to assess the potential places for wetlands restoration and creation in San Pedro and Wilmington. The recommendations shall be provided to the Port for action.

### **EXHIBIT B**

List of Projects Relating to Section V of this Agreement

1. San Pedro Waterfront Project
2. Channel Deepening Project
3. B226-236: Evergreen Container Terminal Improvements Project
4. Plains All American Oil Marine (Pacific Energy), Pier 400 Project
5. B97-109: China Shipping Development Project
6. B171-181: Pasha Marine Terminal Improvements Project
7. 302-305: APL Container Terminal Improvements Project
8. Wilmington Waterfront Master Plan, (Avalon Blvd. Corridor Project)
9. Port Transportation Master Plan, Port of Los Angeles
10. B206-224: YTI Container Terminal Improvements Project
11. B121-131: Yang Ming Container Terminal Improvements Project
12. Ultramar Lease Renewal Project
13. Terminal Island On-Dock Rail Project

## EXHIBIT C

The following chart outlines how potential contributions to the Port Community Mitigation Trust Fund could work in 2008.

	<b>Growth</b>	<b>Contribution</b>
Natural growth	365,000 TEUs (@ \$2)	\$730,000
San Pedro Waterfront Project	1,106,787 PX (@ \$1.5)	\$1,661,805
B97-109: China Shipping Development Project	1,147,800 TEUs (@ \$3.50)	\$4,017,300
Plains All American Oil Marine (Pacific Energy), Pier 400 Project	34,845,841 tons (@.15)	\$5,226,876
<b>Total</b>		<b>\$11,635,981</b>

- Assumptions: (1) Natural growth in TEUs at 5%;  
(2) Waterfront Development adds 1,106,787 passengers;  
(3) China Shipping Project assumes an additional 1,147,800 TEUs;  
(4) Pacific Energy Partners add 34,845,841 tons; and  
(5) The projects within this table proceed.



# TrAPac EIR/EIS Analysis of Percent Low- Income Population

\*\*\*NRDC has not taken a position about whether the Port of Los Angeles conclusion that 1.25 times the national Census poverty threshold is appropriate to capture the full impacts of port operations on harbor area Residents.

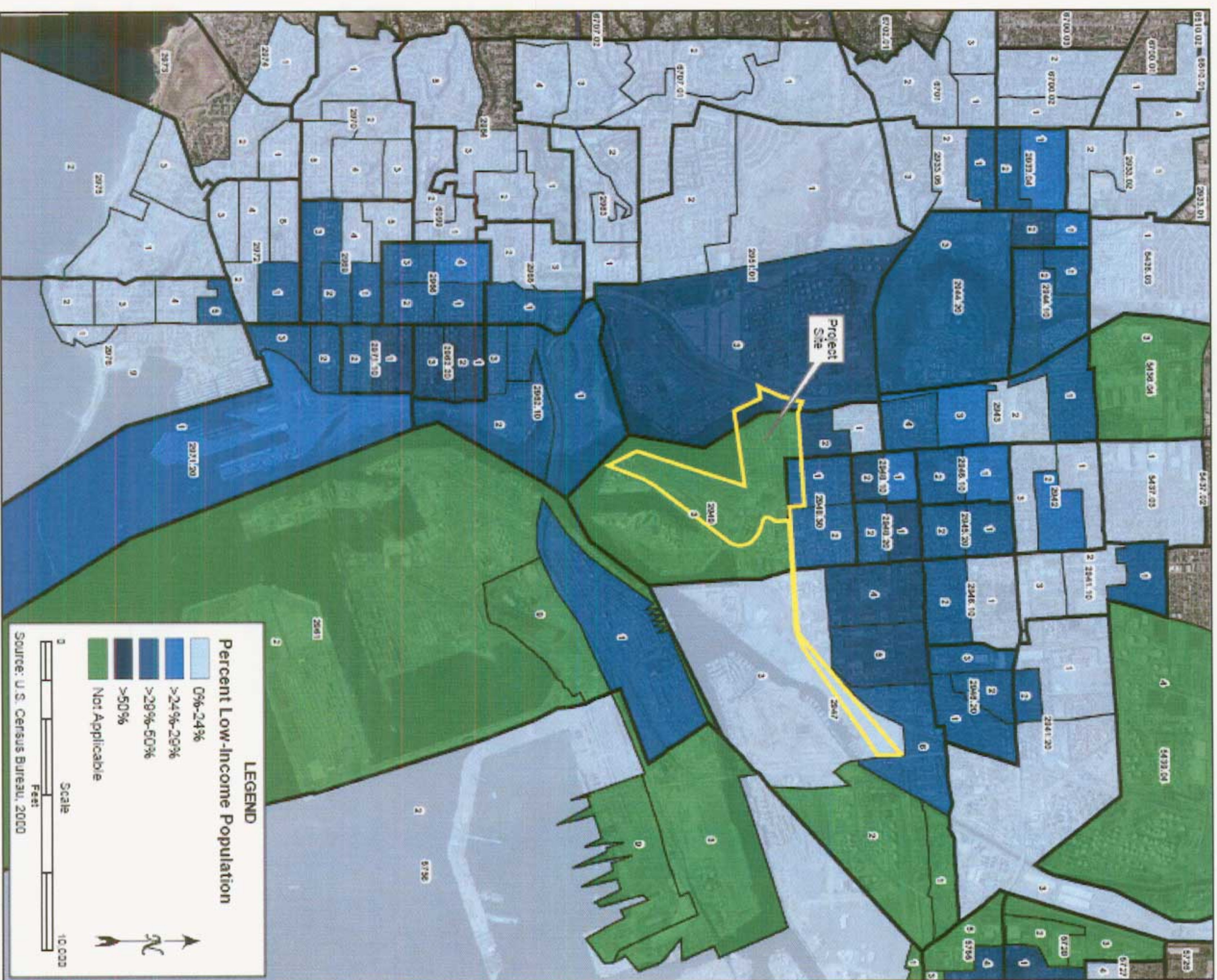


Figure 5-2. Percent Low-Income Population



# TrAPac EIR/EIS Analysis of Minority Populations Near the Project

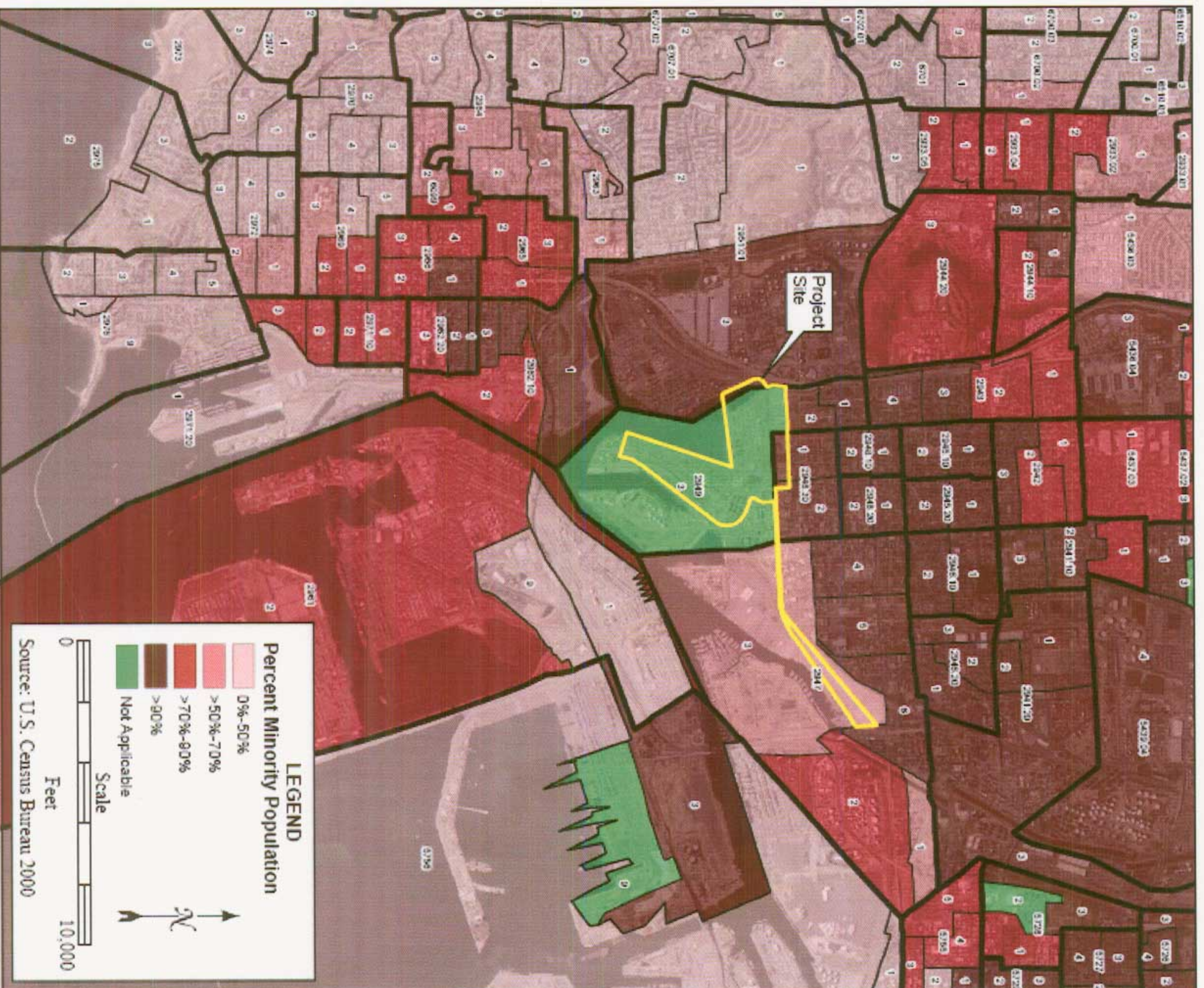


Figure 5-1. Percent Minority Population